

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,  
Plaintiff, CASE NUMBER 1:01-CR-025-01

vs.

Harrisburg, Pennsylvania  
MONROE HAWKINS, 24 July 2002  
Defendant. 11:00 a.m.

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE WILLIAM W. CALDWELL  
UNITED STATES DISTRICT JUDGE

VOLUME 1 OF 2

A P P E A R A N C E S

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Reported by Glenda S. Travitz, Registered Professional  
Reporter.

1 MR. BEHE: Good morning, Your Honor. Your  
2 Honor, this is the matter of United States of America  
3 versus Monroe Hawkins at Criminal Docket Number  
4 01-025-01. Mr. Hawkins is present before you with  
5 counsel, Mr. Thomas. Now is the time and place set for  
6 sentencing in this matter. I believe Mr. Thomas has  
7 some outstanding objections to the pre-sentence report.

8 THE COURT: All right. Mr. Thomas, do you  
9 want to pursue those objections?

10 MR. THOMAS: Yes, Your Honor. First, we'd  
11 like to state simply that we appreciate the Court's  
12 understanding and indulgence for granting the  
13 continuance the last time. We do appreciate that.

14 Your Honor, the defendant, Mr. Monroe, has  
15 several objections to the Pre-Sentence Investigation  
16 Report. Not necessarily most importantly but at the  
17 outset is the calculation of the drug amounts. The  
18 drug amounts were clearly based on a review of a  
19 transcript, not based on -- They simply were not in  
20 keeping with what the record holds.

21 And we understand that according to the  
22 Appendi decision that any fact that increases the  
23 penalty for a crime--in this case, it does--increases  
24 it more than what the statute allows, that it has to be  
25 submitted to a jury and proved beyond a reasonable

1 doubt.

2                   Based on the calculations in the  
3 Pre-Sentence Investigation Report, the calculations  
4 come up to -- are between 50 and 150 kilograms. We  
5 have recalculated those numbers and found that the drug  
6 amounts, just based on the trial testimony alone and  
7 just based on what's available in the record--and we  
8 have that information to provide for the Court--is  
9 under 15 grams. And --

10                   THE COURT: Fifteen grams?

11                   MR. THOMAS: I'm sorry. Fifteen  
12 kilograms. Yes, Your Honor.

13                   THE COURT: Okay.

14                   MR. THOMAS: Your Honor, we are prepared  
15 to pinpoint and to direct the Court's attention to  
16 those sections of the trial transcripts and the record  
17 that support our contention that it is under 15  
18 kilograms.

19                   THE COURT: Mr. Behe, do you want to  
20 respond to that, sir?

21                   MR. BEHE: Yes, Your Honor. There was a  
22 correction to the Pre-Sentence Investigation Report  
23 made by the probation department in this matter that  
24 did, in fact, lower the range in this case, based on  
25 the drug computation, to be at least 15 but less than

1 50 kilograms, not the original in excess of 50  
2 kilograms.

3 I must say that was my fault, the original  
4 calculation. At the time that I was asked to prepare a  
5 submission to probation, I did alert them that I'm  
6 going on memory. It was a trial, and I was sitting and  
7 reviewing reports. I didn't have the benefit of the  
8 trial transcript. And based on my review of the  
9 reports, that 50 to 150 was the range that I came up  
10 with.

11 After the report was prepared, however, I  
12 guess Mr. Thornton and Mr. Thomas had the transcripts  
13 prepared. And upon review of them, we now have  
14 conceded that range was high, the 50 to 150.

15 I don't think Apprendi applies at all.  
16 The jury found in this case that the amount of cocaine  
17 that was involved in this case would allow for a  
18 sentence of imprisonment of up to life. There is no  
19 Apprendi issue in this case. Apprendi doesn't apply to  
20 the guidelines in this matter. As long as the  
21 guideline range fits within the statutory maximum,  
22 that's fine. The jury here found specifically that the  
23 amount of cocaine involved would allow for up to life  
24 imprisonment, so there really is no Apprendi issue.

25 I think the main issue and the main

1 dispute in this is that Mr. Thomas, on behalf of  
2 Mr. Hawkins, maintains that relevant conduct would not  
3 permit the Court to consider the cocaine distribution  
4 activities that his client was involved with in '93  
5 and '94 before he went to prison for a brief period of  
6 time and into a halfway house. If that is considered,  
7 Mr. Hawkins himself admitted that the amount was at  
8 least nine kilograms. His runner said it was closer to  
9 20 kilograms during that period of time. If you take  
10 the testimony of Mr. Heim and from Mr. Rosenberger and  
11 the others and consider that testimony, you are well in  
12 excess of the 15 kilograms. Mr. Thomas's position is  
13 the Court can't consider that.

14 I think it's relevant conduct for the  
15 simple reason that the theory that Mr. Hawkins had been  
16 proceeding on and is proceeding on now is flawed, and  
17 that is that his prior drug conviction took into  
18 account everything he did before he went to prison.  
19 Well, that's not true.

20 The drug conviction for Mr. Hawkins was  
21 based on the fact that when he was arrested in '94 on  
22 the basis of an outstanding warrant they found cocaine  
23 on his person. It had nothing to do with any  
24 investigation, him being involved in drug distribution,  
25 sending couriers to New York, bringing it back and

1 making substantial amounts of money here in the  
2 Harrisburg area. In other words, it was an isolated  
3 incident that had nothing to do with that.

4 Under the relevant conduct provisions of  
5 the guidelines, the Court can look at whether or not  
6 the conduct relates to the conduct of the conviction.  
7 Here Mr. Hawkins used the same source, the same city,  
8 the same courier. The only thing that happened was  
9 there was a brief period of time where his  
10 incarceration prevented him from dealing with  
11 Mr. Bennett to make these runs. No sooner does he get  
12 into the halfway house in April of '96 than he picks up  
13 again with the same courier, the same source, the same  
14 city.

15 So I don't think he should benefit by this  
16 abated period of time and a prior conviction to say  
17 that you can't consider the fact that there was at  
18 least nine, by his own admissions, or up to 20 kilos  
19 that came in during that period of time.

20 I guess initially if Your Honor disagrees  
21 with me I would say that that would probably take it  
22 into the range Mr. Thomas suggests. If Your Honor  
23 believes that that can be considered as relevant  
24 conduct, along with the trial testimony, we're at least  
25 in the twenty-some kilo range.

1 THE COURT: I don't have the file with me.  
2 But is there a period in the indictment?

3 MR. BEHE: Yes. The indictment begins  
4 from on or about, I believe, August or September of  
5 1996 up to and including 1998.

6 THE COURT: The relevant conduct you're  
7 speaking of, does that predate the --

8 MR. BEHE: Yes. It's '93 to '94.  
9 Mr. Hawkins went to jail, I believe, in July or  
10 something of '94.

11 THE COURT: I'm concerned from a legal  
12 standpoint as to whether or not the Court may consider  
13 conduct that predates the charges in the indictment.

14 MR. BEHE: Yes, you may, under relevant  
15 conduct. I think it's quite specific in that regard.  
16 If I could refer the Court to, particularly, common  
17 scheme or plan and same course of conduct, specifically  
18 Section 1B1.3, which deals with relevant conduct. It  
19 says that the Court may consider conduct that were part  
20 of the same course of conduct or common scheme or plan  
21 as the offense of conviction.

22 Now, in Paragraph 9 of the commentary, the  
23 common scheme or plan and same course of conduct are  
24 described for the Court and are defined.

25 THE COURT: Let me just get that in front

1 of me.

2 MR. BEHE: Yes, Your Honor.

3 THE COURT: Are we looking at the 2001  
4 edition?

5 MR. BEHE: Yes, Your Honor, that's what  
6 I'm referring to.

7 THE COURT: Effective November 1st 2001?

8 MR. BEHE: Yes, Your Honor.

9 THE COURT: 1B1 --

10 MR. BEHE: Point three.

11 THE COURT: Okay.

12 MR. BEHE: There, Your Honor, in Paragraph  
13 9 of the commentary under the Application Notes, same  
14 course of conduct is defined. It says that offenses  
15 that do not qualify as part of a common scheme or plan  
16 may nonetheless qualify as part of the same course of  
17 conduct if they are sufficiently connected or related  
18 to each other as to warrant a conclusion that they are  
19 part of a single episode or spree or ongoing series of  
20 offenses. Factors that are appropriate to consider in  
21 the determination of whether the offenses are  
22 sufficiently connected or related to each other to  
23 consider this include the degree of similarity of the  
24 offenses, the regularity, repetition of the offenses,  
25 the time interval between the offenses.



1 And when those are considered in this  
2 case, I would suggest that the interruption of  
3 Mr. Hawkins going to prison until he's released in a  
4 halfway house in April of '96 should not preclude the  
5 Court from considering this.

6 This isn't a legal question of whether or  
7 not a conspiracy terminates by somebody withdrawing  
8 from it or being unable to participate in that conduct.  
9 This is a question of whether or not that conduct that  
10 he engaged in with Mr. Bennett can be considered by the  
11 Court. I think either under the common scheme or plan  
12 or same course of conduct that should be considered by  
13 the Court and included.

14 THE COURT: Well, my -- I will state at  
15 this point at least that I agree with the government  
16 that there is no Apprendi issue present in this case.

17 But I will hear you, Mr. Thomas, if you  
18 want to respond to whether or not the relevant conduct  
19 that has been referred to may be considered by me in  
20 determining the quantity of cocaine.

21 MR. THOMAS: Yes, Your Honor. At the  
22 outset, with regard to the Apprendi decision, we  
23 believe that there's only an issue there because the  
24 enhancement will subject the defendant to an enhanced  
25 sentence. Then, by doing that, the drug amounts then

1 have to be an element of the offense under the Appendi  
2 decision, without regard to -- We understand the  
3 Appendi decision simply states that it's a matter that  
4 has to be submitted to a jury and all of that. But now  
5 it becomes an element of the offense, the drug amount  
6 here. The jury came back, and they just said that he  
7 was convicted and guilty of 50 kilograms or more. I'm  
8 sorry, Your Honor. Five kilograms.

9 THE COURT: As I understand it, though,  
10 the Appendi case holds that it applies where the  
11 penalty is beyond the statutory penalty for the  
12 offense, which in this case can be up to life  
13 imprisonment.

14 Well, in any event, I'm going to make that  
15 ruling, Mr. Thomas. Of course, that's something that  
16 will be preserved for appeal.

17 Now we're to the point of whether this  
18 relevant conduct is proper to be considered.

19 MR. THOMAS: Your Honor, as relates to  
20 relevant conduct from '93 and '94, the point is simply  
21 that the offense of the conviction occurred during the  
22 period of the indictment. The Court correctly made the  
23 inquiry about when the indictment began. That's when  
24 the investigation into the offense began, back in 1996.  
25 It was during that relevant period that the activity

1 occurred.

2           According to the guidelines and in the  
3 notes in the guidelines, as they were read, I believe  
4 it relates to a single episode or a spree. The  
5 government has already conceded that there's been  
6 termination or that the conduct or the activity ceased  
7 for a period of time. It was interrupted. It was  
8 interrupted during the time that he was incarcerated.

9           So to relate back to a common plan or  
10 scheme or a single episode, Your Honor, it's simply our  
11 contention that it's not a single episode. If any  
12 activity began again, which we understand there is a  
13 conviction for, it was from '96 at the time of the  
14 investigation and beyond. There is no evidence in  
15 addition to that, no evidence either in trial  
16 transcripts or testimony that I can find, at least,  
17 that there was any activity that occurred at the time  
18 that he was in the halfway house.

19           THE COURT: All right. Well, I'm going to  
20 reserve my ruling on that point.

21           MR. BEHE: Can I just make one comment,  
22 Your Honor?

23           THE COURT: Yes.

24           MR. BEHE: To address Your Honor's concern  
25 about the difference in the time from the indictment

1 and previous conduct that I asked to be included, I  
2 think that that Subparagraph B of Paragraph 9 of the  
3 Application Notes speak to that, advising the Court as  
4 to whether or not something can be considered as same  
5 course of conduct. They talk about the different  
6 factors, the degree of similarity, the regularity.

7 THE COURT: You've made that point.

8 MR. BEHE: But here it says, Your Honor,  
9 where the conduct alleged to be relevant is relatively  
10 remote to the offense of conviction in time, a stronger  
11 showing of similarity or regularity is necessary to  
12 compensate for the absence of temporal proximity,  
13 meaning you can consider something that isn't  
14 necessarily within that time frame as long as perhaps  
15 the same co-conspirator, same source, other things are  
16 relatively similar.

17 THE COURT: Thank you.

18 MR. THOMAS: Your Honor, since we're  
19 talking about an area here that is going to make a  
20 significant difference in the outcome here at  
21 sentencing, would the Court grant -- I understand  
22 you're going to not rule today, but would the Court  
23 permit us to --

24 THE COURT: I didn't say I wasn't going to  
25 rule today. I said I'm going to withhold judgment

1 until I hear the other objections. I want to consider  
2 this a little further.

3 Let's go on with the next objection.

4 MR. THOMAS: The next objection, Your  
5 Honor, relates to the enhancement due to an organizer  
6 or leader adjustment. According to the Pre-Sentence  
7 Investigation Report, the enhancement is increased by  
8 four levels under 3B1.1(a), that the defendant was an  
9 organizer or leader of criminal activity that involved  
10 five or more participants or was otherwise extensive.

11 Your Honor, again, based on the trial  
12 transcripts and the record, there is simply no evidence  
13 that the activity involved any leadership activity of  
14 more than five people, if any. If any, perhaps one  
15 person may be identified as someone that he acted in a  
16 manager or supervisory capacity under the language of  
17 the statute.

18 THE COURT: You'll recall the testimony  
19 better than I can at this point, but it seems to me  
20 there were four or five runners that went to New York  
21 on his behalf, according to the testimony.

22 MR. THOMAS: Well, Your Honor, there was  
23 Christian Bennett that was identified as a runner.  
24 Charles Rosenberger was identified as a runner. The  
25 others, Steven Cupp and Heim, Mr. Heim was making runs

1 for himself; and there's no indication in the record,  
2 in the trial transcripts, where he expressly stated  
3 that he was making runs for Mr. Hawkins. Based on that  
4 alone -- And please forgive me if there are more  
5 runners than the ones I just identified, but I don't  
6 believe that there are.

7 THE COURT: I think the pre-sentence  
8 report refers to four or five, and I'm not sure what  
9 page that is on. Do you happen to have that?

10 MR. THOMAS: Yes, Your Honor. The  
11 government has already conceded that this Pre-Sentence  
12 Investigation Report was prepared. As a matter of  
13 fact, in it, in Paragraph 5, it says the following  
14 statement of facts was submitted by Assistant U.S.  
15 Attorney William A. Behe, based on his best  
16 recollection of trial testimony. So it was not based  
17 on review of the transcripts.

18 THE COURT: There's Christian Bennett,  
19 Charles Rosenberger, Joseph Heim, and Maurice Young.  
20 That's what the pre-sentence report says, and that's  
21 what Mr. Behe reported. But you're telling me --

22 MR. THOMAS: Actually, Mr. Behe just told  
23 the Court -- he conceded that the information that was  
24 provided was based on his simple recollection.

25 THE COURT: I understand that. I'm just

1 trying to get the number of people involved here that  
2 were runners.

3 Mr. Behe, do you want to --

4 MR. BEHE: Yes, Your Honor. The Paragraph  
5 28 of the Pre-Sentence Investigation Report correctly  
6 does not limit the analysis that the Court should use  
7 to decide the role in the offense to who was a runner.  
8 The question is whether or not this individual was the  
9 organizer or leader of an organization or a criminal  
10 activity that involved five or more participants or was  
11 otherwise extensive.

12 The pre-sentence report correctly notes  
13 that this defendant was involved with Christian  
14 Bennett, a runner; Charles Rosenberger, a runner;  
15 Joseph Heim, who was a runner at times for himself and  
16 the defendant; Maurice Young, who has pled before Your  
17 Honor to making trips for the defendant--he was  
18 identified at trial by the name of Reese, but he's  
19 listed here--Steven Cupp, and Ruth Mitchell, who was  
20 the defendant's girlfriend who stored drugs at her  
21 apartment for him.

22 I think that and the volume of drugs that  
23 are being involved -- or that were involved in this  
24 case and the defendant's role in this in introducing  
25 people to the sources, to setting up the deliveries

1 show that it's otherwise extensive. If not, that there  
2 were five or more participants.

3 THE COURT: I misspoke when I indicated  
4 perhaps that we're talking about runners here. We're  
5 not talking about runners. I agree with that. The  
6 point I was making--I didn't know what the nature of  
7 the objection was going to be--there have been  
8 decisions that indicate that runners qualify, can make  
9 a person a leader if all you do is ask a person to be a  
10 runner for you.

11 So the government is taking a position  
12 that the defendant's total activity involved all these  
13 people and that they were all involved in dealing with  
14 drugs in one way or another.

15 With those clarifications, do you want to  
16 respond to that?

17 MR. THOMAS: Yes, Your Honor. Under the  
18 commentary to this particular code section, it requires  
19 that somebody who acts in a leadership position meet  
20 certain criteria. There's different factors for the  
21 Court to consider.

22 Probably most important is the exercise of  
23 decision-making authority. That decision-making  
24 authority, again, just based on a review of the trial  
25 transcripts, can only be attributed to that which is



1 applied to Christian Bennett and perhaps  
2 Mr. Rosenberger. But even in his testimony -- At one  
3 portion of his testimony, a question was asked whether  
4 or not he made runs for Monroe Hawkins; and he says no.  
5 Even that, too, is in question.

6 With regard to Mr. Heim, again, there's  
7 never been any express testimony that he did anything  
8 in that regard, except simply make a referral, make a  
9 referral of Mr. Rosenberger to Mr. Hawkins to become a  
10 runner.

11 But there's no exercise of decision-making  
12 authority over at least five people that's required for  
13 this particular enhancement.

14 THE COURT: I think the section that we're  
15 referring to, as Mr. Behe has indicated, shows that the  
16 defendant was an organizer or leader in a criminal  
17 activity involving five or more criminal participants.  
18 Now, are you saying these people were not involved with  
19 him as criminal participants?

20 MR. THOMAS: Your Honor, I'm suggesting  
21 that there's only really, again, based on the trial  
22 transcripts, only two people that can be identified as  
23 participants. Mr. Heim cannot be identified as a  
24 participant. I don't believe that Mr. Cupp is.  
25 Maurice Young was -- I believe that count of the

1 indictment was dismissed. Your Honor, you have to  
2 forgive me in not recollecting. It's a week's worth of  
3 testimony.

4 THE COURT: What about that, Mr. Behe,  
5 that the record only indicates that he was leading or  
6 had these two people involved in his activity?

7 MR. BEHE: I completely disagree with  
8 that. The record in this case, Your Honor, is not  
9 limited, necessarily, to the trial transcript. Your  
10 Honor has had Maurice Young plead guilty before you,  
11 admitted to making runs for this defendant to New York.  
12 You have Christian Bennett, who has made runs for him;  
13 Charles Rosenberger, who has made runs for him; Joseph  
14 Heim, who was getting drugs from the defendant, getting  
15 drugs on his own as well; Ruth Mitchell, who was  
16 assisting him; Steven Cupp, who testified to what he  
17 was involved with the defendant. Those witnesses were  
18 called at trial to testify as to their involvement with  
19 the defendant and his role in arranging for the drug  
20 deals, providing for cash to be taken.

21 THE COURT: Did Maurice Young testify?.

22 MR. BEHE: He did not. He was a fugitive  
23 at the time, Your Honor. But he was identified at  
24 Reese by individuals involved in it. But he was  
25 apprehended and has pled guilty to Your Honor.

1 THE COURT: Yes, I know he did.

2 MR. THOMAS: Your Honor --

3 THE COURT: Just a second.

4 Okay. What else did you want to say?

5 MR. THOMAS: Your Honor, we believe that  
6 there is testimony by Christian Bennett where he said  
7 something to the effect that this Reese did not make  
8 runs. We would simply have to look at the transcript  
9 in order to maybe make that determination.

10 One thing we do know, Your Honor, is that  
11 under the case law that direct control over others is  
12 absolutely necessary to support any enhancement under  
13 this section, whether it falls under A, B, or C.  
14 Again, it's our contention that it's only two, so it  
15 should fall --

16 THE COURT: I think there's an argument to  
17 be made here. Based upon all the considerations before  
18 me, I will apply 3B1.1(c) and increase the level by  
19 two, rather than four. So we're reducing from four to  
20 two in that particular situation.

21 Are there other objections that affect the  
22 calculation of the sentence?

23 MR. THOMAS: Yes, Your Honor. The  
24 defendant objects to the enhancement due to obstruction  
25 of justice. The defendant never willfully obstructed

1 or attempted to obstruct or impede the administration  
2 of justice during the course of the investigation. He  
3 simply maintained his innocence. Any testimony that he  
4 made during the trial is just simply not believed by  
5 the jury, and that should not be held against him  
6 simply because the jury didn't believe what he was  
7 saying.

8 THE COURT: You know, it depends, I think.  
9 In this case, the question is whether he committed  
10 perjury in what he did say. I think that's an issue  
11 for the Court to resolve.

12 MR. THOMAS: Exactly. That's the next  
13 point I wanted to make, Your Honor. There has not been  
14 given any indication as to what specifically the  
15 defendant is being charged with to credit this  
16 enhancement.

17 THE COURT: Well, what did he testify to?

18 MR. THOMAS: That's our question.

19 THE COURT: He testified, and he denied  
20 being involved with these people in the matters that  
21 they testified to, as I recall.

22 MR. BEHE: Yes, Your Honor. As a matter  
23 of fact, the testimony of the defendant has been  
24 transcribed as well. During his testimony, he  
25 specifically and emphatically denied ever being

1 involved with Joseph Heim in dealing drugs, a factor  
2 that the jury had to consider because Mr. Heim  
3 described his drug dealings with the defendant in the  
4 halfway house and once he was released from the halfway  
5 house, denied specifically being involved with Mr. Heim  
6 in making drug runs to New York, denied ever using  
7 Charles Rosenberger as a runner for him, denied that  
8 Rosenberger ever rented cars for him when we had a  
9 chart that showed all the rentals that Rosenberger made  
10 to make the drug runs for him to New York.

11 Specifically, admissions, when the parole  
12 officer from the state testified, he said that the  
13 defendant admitted that he stopped dealing drugs in  
14 about January of '98 and that he would plead guilty if  
15 he was asked to. Incredibly significant because the  
16 defendant's theory to the jury was everybody was a liar  
17 and that he stopped dealing drugs when he went to  
18 prison in '94. So when the parole officer testified  
19 that he made an admission, it was very significant.  
20 The defendant took the stand and denied ever saying  
21 that to Agent Forney with the probation office.

22 On cross-examination, he denied again  
23 dealing with Heim on drugs. Essentially, I think --  
24 and specifically countered everything that the  
25 government presented by way of witnesses as to his drug

1 involvement. That is clearly beyond simply saying, I  
2 didn't do this. It's an affirmative attempt to subvert  
3 the jury through perjury.

4 MR. THOMAS: Mr. Behe, would you please  
5 repeat what you were saying about the prior statement  
6 to Mr. Forney?

7 MR. BEHE: If the Court permits me to.

8 THE COURT: Sure.

9 MR. BEHE: At Page 30 of the defendant's  
10 testimony at trial, he was asked if he had a  
11 conversation with Forney. Forney had testified that  
12 the defendant admitted to him that he had stopped  
13 dealing drugs in January of '98, which is four years  
14 beyond what the defendant testified to at trial.

15 And the defendant said, Forney, no, I  
16 didn't say nothing to him. No, I didn't say anything  
17 in front of him.

18 THE COURT: Well, this is one objection  
19 that does not cause any problem for me because I think  
20 it's clearly been shown that there was obstruction of  
21 justice. Under the decision in U.S. versus Duncan, the  
22 Supreme Court has made it clear that the right to  
23 testify in one's defense does not include the right to  
24 commit perjury. The Court further defined perjury and  
25 said perjury is committed when a witness gives false

1 testimony concerning a material matter and the  
2 testimony is given with a willful intent to provide  
3 false testimony.

4           The defendant in this case, based on the  
5 references that Mr. Behe has made--and there are  
6 others--the defendant denied involvement in dealing  
7 drugs when it is clear from the evidence in the case,  
8 as the jury found beyond a reasonable doubt, that he  
9 was involved in the conspiracy alleged in the  
10 indictment.

11           By virtue of the defendant's failure to  
12 give truthful testimony on material matters--a failure  
13 that, in my view, was designed to substantially affect  
14 the outcome of the case--we conclude that the  
15 defendant's false testimony at trial constitutes  
16 perjury and warrants an upward adjustment in his  
17 offense level of two points.

18           Are there additional objections which  
19 affect the calculation of the sentence?

20           MR. THOMAS: Yes, Your Honor. The section  
21 of the Pre-Sentence Investigation Report that relates  
22 to criminal history computation, we believe that the  
23 criminal history should be corrected. In Paragraphs 38  
24 and 39, actually through 40, it basically alleges that  
25 there was some sort of activity while he was on parole

1 and in the halfway house. And, again, there is just  
2 simply no testimony that exists at all prior to this  
3 case that would be involvement in any illegal activity  
4 while in the halfway house.

5 THE COURT: Well, let's take them one at a  
6 time. The first one was two points were added because  
7 he committed the instant offense while in the halfway  
8 house and under parole supervision. Are you saying  
9 that's not correct or shouldn't be added?

10 MR. THOMAS: Yes, Your Honor, not that  
11 there was any activity while he was in the halfway  
12 house.

13 THE COURT: Mr. Behe.

14 MR. BEHE: Your Honor, that is just flatly  
15 contradicted by the trial testimony that was presented  
16 by Joseph Heim. He testified that he met the defendant  
17 when they were in the halfway house approximately April  
18 of 1996, that they formed a relationship and a  
19 friendship there. While in the halfway house, the  
20 defendant was supplying Mr. Heim or getting Mr. Heim  
21 cocaine and Mr. Heim would distribute.

22 Mr. Bennett testified that he would pick  
23 the defendant up while he was still in the halfway  
24 house for the purpose of making drug deliveries. The  
25 defendant might deny it. I think the jury's verdict



1 refutes that.

2           Regardless, it is kind of a joint position  
3 that the probation takes. Not only did he commit the  
4 offense while in a halfway house, but he was under  
5 parole supervision. I think both apply regardless.  
6 Even the second one that he was under state parole  
7 supervision can't be denied. That's just a fact.

8           THE COURT: All right. The second point,  
9 Paragraph 39 adds one point because he committed this  
10 offense less than two years after his release from  
11 imprisonment. Is there any objection to that?

12           MR. THOMAS: No objection to that, Your  
13 Honor.

14           THE COURT: So it's just the two points in  
15 Paragraph 38?

16           MR. THOMAS: Yes, Your Honor. Let me just  
17 say to the -- You know, understand that counsel came  
18 into this after the trial.

19           THE COURT: I appreciate that.

20           MR. THOMAS: If Mr. Behe's contention is  
21 accurate, we'll just beg your indulgence for not being  
22 accurate with our research.

23           THE COURT: Well, I think his statement is  
24 accurate, because I recall very clearly the testimony  
25 about the activities that were going on while the

1 defendant was in the halfway house. So I think if  
2 there was an objection to Paragraph 38, we overrule it.  
3 And those two points are already included in the  
4 calculation.

5 Are there additional matters that affect  
6 the calculation of the sentence?

7 MR. THOMAS: Yes, Your Honor. Mr. Hawkins  
8 requests a downward departure from the guideline range  
9 because of special circumstances that do exist,  
10 particularly his post-conviction rehabilitation  
11 efforts.

12 He has been incarcerated for some time  
13 now. And during that period of time, he has engaged in  
14 a number of activities while he has been in prison to  
15 rehabilitate himself and to help other prisoners,  
16 including the teaching of English as a second language.  
17 He has attended every self-improvement class or seminar  
18 or other type of program that's been there. He has  
19 availed himself of all the different programs that have  
20 been available to him at the prison.

21 THE COURT: Let me just interrupt you  
22 there. I want to ask you a legal question.

23 MR. THOMAS: Yes.

24 THE COURT: I thought that the type of  
25 rehabilitation you're talking about is rehabilitation

1 that occurred after his sentence is imposed and the  
2 defendant, for one reason or another, may be  
3 reappearing for resentencing. Are these things that  
4 the Court can consider in sentencing at this time?

5 MR. THOMAS: I was looking, Your Honor, at  
6 the Sally decision. I'll have to look -- Sally is a  
7 Third Circuit decision from 1997.

8 THE COURT: Mr. Behe, can you shed any  
9 light on this question?

10 MR. BEHE: I'm afraid I can't point to any  
11 specific decision that would answer the question for  
12 Your Honor. I would like to think that Your Honor  
13 could make a finding that you do have the authority and  
14 discretion to consider the request.

15 I would reserve my remarks to simply say  
16 it's just inappropriate in this matter. You aren't  
17 hearing anything exceptional about this defendant.  
18 This seems to me to be what is expected of individuals  
19 who are incarcerated, that they engage in conduct that  
20 will reform and rehabilitate themselves. So I would  
21 limit my argument to that.

22 THE COURT: Ms. Baker, do you have  
23 anything you want to say on this?

24 MS. BAKER: I believe Mr. Hawkins made  
25 post-offense rehabilitative effort, rather than post-

1 conviction rehabilitative effort. We've seen a number  
2 of people after pleading guilty that have taken a  
3 number of steps prior to sentencing. That may be what  
4 Mr. Thomas is referring to.

5 THE COURT: Well, I think this would  
6 require my hearing testimony and evidence. I mean  
7 there's nothing in the record to reflect any of this  
8 that I know of.

9 MR. THOMAS: Your Honor, in response to  
10 Mr. Behe's assertions, there's no requirement that any  
11 inmate that's incarcerated really do anything other  
12 than serve his time.

13 He has voluntarily taken upon himself to  
14 assist and to help those who were in there to learn to  
15 speak and read English and to help to improve  
16 themselves and thereby bettering himself in the process  
17 and, just again, to avail himself of all the other  
18 programs that are available. We'll certainly be happy  
19 to provide any information in that regard.

20 THE COURT: I read your sentencing  
21 memorandum a week or so ago. There may be something in  
22 there about that. I'm not sure.

23 Was there an objection concerning the  
24 criminal history category? I think the criminal  
25 history category here is three.

1 MR. BEHE: I think we resolved that, Your  
2 Honor. Those paragraphs that we went over where the  
3 criminal history points were added, the two and the  
4 one, that's what takes him to category three. So I  
5 think we've addressed that.

6 THE COURT: But there is sometimes  
7 objections to the fact that the criminal history  
8 category overstates the seriousness of the prior  
9 record.

10 MR. BEHE: I don't believe there is that  
11 objection in this case.

12 THE COURT: Okay. I don't think there is  
13 either.

14 MR. THOMAS: By the way, Your Honor, with  
15 regard to the other special circumstances, the  
16 defendant's family has recently had a tragic loss. I  
17 guess it was last week or a week and a half ago. I  
18 think it was on Linglestown Road. There were six young  
19 people that died at the hands of a drunken --

20 THE COURT: Yes.

21 MR. THOMAS: And the defendant's niece is  
22 one -- cousin is one that was lost in that. It's just  
23 simply that during this time his family needs his  
24 support. It's my understanding that there are not that  
25 many male figures there who can provide that kind of

1 support that only a male can give. In light of that,  
2 understanding how difficult this time must be, I just  
3 pray for leniency.

4 THE COURT: That's very sad and  
5 regrettable. I appreciate that and how the family has  
6 to face those sorts of things.

7 Is that the final one then?

8 MR. THOMAS: No, Your Honor. Finally, the  
9 defendant just simply has no ability to pay the fine.  
10 While he's incarcerated, he does not have the ability  
11 to be gainfully employed. And with the term of this  
12 sentence, it's going to be extremely difficult, if not  
13 impossible, for him to pay this fine.

14 THE COURT: Well, I think the  
15 contemplation is that he will be able to earn funds  
16 while he is incarcerated and that some of those funds  
17 could be used to pay a fine. But I will reconsider  
18 that.

19 I think the only matter I haven't ruled  
20 upon is the issue of relevant conduct. Is that  
21 correct?

22 MR. THOMAS: I believe so.

23 THE COURT: Whether that can be considered  
24 to take the quantity of cocaine above the 15 kilograms.

25 MR. THOMAS: Your Honor, it's not --

1 Certainly the relevant conduct alone would bring the  
2 amount of drugs up over the 15-kilogram mark. But even  
3 if that's not considered, if I understand Mr. Behe's  
4 contention, it is that even without the relevant  
5 conduct that we're still -- your calculations are still  
6 over 15, or no?

7 MR. BEHE: When I calculated it, Your  
8 Honor, without the drug weight that I'm considering the  
9 relevant conduct, I came a little over 15 kilograms.

10 But when you're dealing with no seizures,  
11 nothing tangible, and you're relying simply on the  
12 memory of the individuals, I would be inclined to give  
13 the defendant the benefit of the doubt if the drugs  
14 aren't considered as part of relevant conduct. If they  
15 are, he's clearly over the 15-kilogram amount. If they  
16 aren't considered, I really, out of fairness to the  
17 defendant, wouldn't be pushing that the drug weight  
18 would take it in excess of 15, just because of the  
19 vagaries of memory.

20 THE COURT: That's very commendable,  
21 Mr. Behe. I think I was probably leaning in that  
22 direction because of the uncertainty of these things.

23 We will go on the basis of five to fifteen  
24 kilograms in imposing sentence.

25 I have an engagement. I want to hear

1 statements from all of you prior to imposing sentence.  
2 So I'm going to defer sentencing until 2 o'clock this  
3 afternoon, if that's okay. Everybody can make that, I  
4 hope.

5 MR. BEHE: Yes, sir.

6 MR. THOMAS: Yes.

7 THE COURT: We will adjourn until 2  
8 o'clock at this point.

9 (Whereupon, at 11:45 a.m., the proceedings  
10 recessed.)

11 (The proceeding recommenced this same day  
12 and was reported by Vicki Fox, RMR.)

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C E R T I F I C A T E

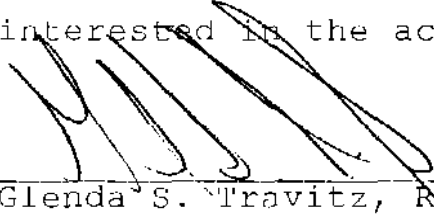
I, Glenda S. Travitz, Registered Professional Reporter, do hereby certify:

That I was duly authorized and did report the proceedings in the above-entitled cause;

That the foregoing pages of this transcript constitute a true and accurate transcription of my stenotype notes;

I further certify that I am not an attorney nor counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

July 18, 2006

  
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Glenda S. Travitz, RPR